

2019 VULNERABLE ADULT ABUSE CONFERENCE

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M & M Room
Tempe, Arizona



ARIZONA REGISTRAR OF CONTRACTORS: VULNERABLE ADULT TARGETS

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Distributed by:

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Arizona Registrar of Contractors

Vulnerable Adult Targets



What is the Registrar of Contractors?

- Regulatory Agency
 - Mission Statement – Protect the health, safety and welfare of the public through a regulatory system designed to promote quality construction by Arizona contractors.
- The Registrar:
 - Regulates licensed contractors;
 - Investigates unlicensed contracting and refers cases for prosecution; and
 - Administers the Residential Contractor's Recovery Fund.

Purpose of Licensing Statutes

- “Statutes relating to licensing requirements for contractors are regulatory measures designed for protection of the public against the unscrupulous and unqualified.”
Westinghouse Elec. Corp. v. Rhodes, 397 P.2d 61, 63 (Ariz. 1964).



A.R.S. § 32-1101(A)(3) – “Contractor”

Covered Actions	Covered Services	Covered Projects
<ul style="list-style-type: none"> • Offering • Bidding • Responding to a request for qualification • Doing the work yourself • Directly or indirectly supervising others 	<ul style="list-style-type: none"> • Altering • Constructing • Repairing • Adding to • Subtracting from • Improving • Moving • Wrecking • Demolishing • Connecting to utility/service lines 	<ul style="list-style-type: none"> • Buildings • Highways • Roads • Railroads • Excavations • Structures • Developments • Improvements

“Contractor”

A.R.S. § 32-1101(B) – “Contractor” includes:

- Subcontractors
- Specialty contractors;
- Floor covering contractors;
- Landscape contractors, other than gardeners; and
- *Consultants* representing themselves as having the ability to supervise or manage a project for the benefit of the property owner.

Look for factors such as:

- Hiring and firing of specialty subcontractors
- Scheduling work on the project; and
- Selection and purchasing of construction material.

“Contractor” – Summary

Any person or any business that, *for compensation*:

- Performs a construction-related task; or
- Supervises anyone else performing a construction-related task

Likely meets the definition of a “contractor” and needs to be properly licensed to perform that task.

Exemptions

EXEMPT

- “Properly construed, A.R.S. § 32-1121 creates safe harbors for certain specific categories of persons who do contracting work.” *Levitan*, 33 P.3d at 798.

Owner-Builder Exemption

- A.R.S. § 32-1121(A)(5) – No license required if the:
 - Owner does the work himself, with his own employees, or with a licensed contractor;
 - Structure is intended for occupancy solely by the owner; and
 - Structure is not intended for sale or rent.
- Proof of sale, or offer to sell within one year of completion is *prima facie* evidence that the project was undertaken for purpose of sale or rent.



Owner-Developer Exemption



- A.R.S. § 32-1121(A)(6) – No license required if:
 - Owner builds structure for the purpose of sale or rent; **and**
 - Contracts with licensed general or specialty contractors.
- To qualify for this exemption, licensed contractors' names and license numbers must be included in all sales documents.

Bona Fide Employee Exemption

- A.R.S. § 32-1121(A)(11) – No license required if the person engaging in contracting activities is:
 - An employee of an exempt property owner; or
 - An employee with wages as that person's sole compensation.



Less Than \$1,000 Exemption



- A.R.S. § 32-1121(A)(14) – No license required if the work is under \$1,000.
- Limitations:
 - Cannot be part of a larger or major undertaking.
 - Doesn't apply if a building permit is required.
 - All advertisements must state "Not a licensed contractor".

Contracting Without a License

Under A.R.S. § 32-1151:

It is unlawful for any	To	Without	Unless
<ul style="list-style-type: none"> Person Firm Partnership Corporation Association Other organization Or a combination of any of them 	<ul style="list-style-type: none"> Engage in the business of a contractor Submit a bid Respond to a request for qualification Respond to a request for proposals for construction services Purport to have the capacity of a contractor 	<ul style="list-style-type: none"> Having a contractor's license; In good standing; and In the name of the person, firm, partnership, corporation, association, or other organization 	An exemption applies. See A.R.S. § 32-1121

Contracting Without a License

Typical Themes

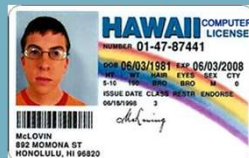
- Fraud Schemes
- Identity Theft
- Vulnerable/elderly victims



Contracting Without a License

§ 32-1164. Violation; Classification; Probation; Conditions

- Acting in the capacity of a contractor within the meaning of Title 32, Chapter 10 without a license is a class 1 misdemeanor



Advertising Contracting Services Without a License

Advertising.



Reality.



§ 32-1165. Advertising; effect of; classification

- Advertising contracting services without a license is a class 1 misdemeanor
 - Exception – “Not a licensed contractor”
A.R.S. § 32-1121(A)(14)(c)

Contracting Without a License - Mandatory Probationary Conditions



§ 32-1164. Violation; Classification; Probation; Conditions

- Mandatory payment of:
 - Transaction privilege taxes
 - Use taxes

Contracting Without a License: Penalties

Criminal Penalties

- A.R.S. § 32-1164
- Acting in the capacity of a contractor without a license is a class 1 misdemeanor
 - First offense - \$1,000 minimum fine
 - Subsequent offenses - \$2,000 minimum fine

Civil Penalties

- A.R.S. § 32-1166
- Initial penalty can be \$200 - \$2,500 – A.R.S. § 32-1166(A)
 - Subsequent violations can be up to \$2,500 per day

Prima Facie Evidence

- A.R.S. § 32-1151 – For purposes of Title 32, Chapter 10, the following are prima facie evidence of existence of a contract:
 - Securing a permit from a governmental agency; or
 - The employment of a person on a construction project.



Prima Facie Evidence



- A.R.S. § 32-1104(A)(3) – Registrar's authority to furnish:
- Certified copy of any license issued; or
 - An affidavit that:
 - No license exists, or
 - A license was cancelled or suspended.

Vulnerable



- A.R.S. § 46-451(A)(9) -
- "Vulnerable adult"
 - Eighteen years of age or older
 - Unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment.
 - Vulnerable adult also includes an incapacitated person as defined in § 14-5101.

Vulnerable



Vulnerable to Construction Theft and Fraud?

- As defined in § 46-451 "vulnerable"
- Fire
- Flood
- Hail
- Wind

Vulnerable to Non-traditional Crime Organizations?

- Most people

Case Study - Abandonment

Complaint #: 2015-4152

Respondent: Patrick Mike Callahan

DBA: "The Handy Men Can, LLC"

Summary

- Victim was referred by a friend to Patrick
- Patrick informed Victim he could replace broken windows/screens/blinds for a good price
- Victim suffered from vision & memory impairment issues
- Victim and Patrick set up payments via transfer of funds from Victim's bank account to Patrick's account
- 4 transfers occurred, totaling \$1,428

Case Study - Abandonment

Complaint #: 2015-4152

Respondent: Patrick Mike Callahan

DBA: "The Handy Men Can, LLC"

Summary (continued)

- Patrick never showed up to perform any work
- Victim's daughter subsequently discovered three checks written to Patrick totaling \$1,220
- The checks were written/signed by someone other than the Victim
- The Registrar referred the case for prosecution for contracting without a license
- Prosecutors added a charge of Theft

Case Study - Abandonment

Complaint #: 2015-4152

Respondent: Patrick Mike Callahan

DBA: "The Handy Men Can, LLC"

Outcome

- Amount stolen from Victim: \$2,628
- Submitted for prosecution on 12/17/2015 in the SE Highland Justice Court
- Patrick failed to appear on 3/16/2016
- Warrant issued on 3/17/2016
- Still open today

Case Study - Poor Work

Complaint #: 2017-1982

Respondent: Agostinho B Lopes

DBA: "European Contractor LLC"

Summary

- Victim attempted to hire a contractor through an online website ("Thumbtack")
- The contractor referred Victim to Agostinho
- Remodeling/room addition project
- Payments made in cash
- Contract price: \$18,000
- Amount paid: \$15,400

Case Study - Poor Work

Complaint #: 2017-1982

Respondent: Agostinho B Lopes

DBA: "European Contractor LLC"

Summary (continued)

- Work began in August and started to slow down in mid-December, before Agostinho stopped showing up completely
- Victim diagnosed with cancer in January 2017
- Victim requested \$9,000 refund, Agostinho agreed to refund \$5,000 but never did
- Registrar referred for prosecution for contracting without a license

Case Study - Poor Work

Complaint #: 2017-1982

Respondent: Agostinho B Lopes

DBA: "European Contractor LLC"

Outcome

- Victim passed away in 2017
- Prosecution ultimately turned down on May 16, 2017
- Reasons:
 - No reasonable likelihood of conviction
 - Does not meet criteria for prosecution

Case Study - Poor Work

Complaint #: 2017-1982

Respondent: Agostinho B Lopes

DBA: "European Contractor LLC"

Summary

- Victim attempted to hire a contractor through an online website ("Thumbtack")
- The contractor referred Victim to Agostinho
- Remodeling/room addition project
- Payments made in cash
- Contract price: \$18,000
- Amount paid: \$15,400

Takeaways

1. The Registrar investigates unlicensed contracting and submits cases for prosecution
2. The Registrar will only submit for contracting/advertising without a license, but if investigation uncovers additional felonies, Registrar will include that evidence
3. Prosecutors often add charges based on facts contained in the Registrar's submittal
4. Registrar's submittal will include
 - a. Official Department Report (ODR)
 - b. Witness statements
 - c. Photo lineup (generally)
 - d. Proof of payment
 - e. Supporting documentation
5. The vast majority of submitted cases are victim-cases
6. Registrar will meet with prosecutors and work to supply whatever is needed to successfully prosecute
